

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

PHILLIP SANDERS,

Plaintiff,

v.

MARGARET MIMS, et al.,

Defendants.

No. 1:20-cv-00634-JLT-SAB

ORDER DENYING PLAINTIFF'S MOTION
TO AMEND

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
ACTION WITH PREJUDICE FOR FAILURE
TO STATE A COGNIZABLE CLAIM

(Docs. 30, 32, 33, 34, 35)

I. BACKGROUND

In this action, Phillip Sanders, a pretrial detainee, complains that on several occasions over approximately 10 days, Defendants were slow to provide him with an inhaler or other treatment for his asthma, especially when fights or riots in Fresno County Jail caused delays or lockdowns. (Doc. 1.)

The Court screened Plaintiff's complaint and determined that he did not plead facts sufficient to support a claim for *Monell* liability or a claim for inadequate medical care as to individual defendants. Specifically, the Court found that Plaintiff alleged only sporadic delays in receiving asthma treatment when needed, and he did not allege injury from failing to receive treatment on any particular occasion. The Court granted Plaintiff leave to amend his complaint to remedy the identified deficiencies. (Doc. 10.)

1 After several extensions of time, Plaintiff filed a first amended complaint. (Doc. 22.) The
2 Court issued a second screening order granting Plaintiff one final opportunity to file a second
3 amended complaint that alleged more than sporadic incidents in which Plaintiff was denied (or
4 provided delayed) asthma treatment. (Doc. 27.) Therein, the Court noted that “[a]lthough it
5 appears unlikely that Plaintiff can amend the complaint to state a cognizable claim, in an
6 abundance of caution, the Court will grant Plaintiff one final opportunity to amend the complaint,
7 if he can do so in good faith.” (*Id.* at 7:11-13.)

8 After the Court granted Plaintiff’s request for a 60-day extension of time to file an
9 amended complaint (Docs. 28, 29), Plaintiff filed a second amended complaint. (Doc. 30.)
10 Plaintiff also filed a memorandum in support of the amended complaint. (Doc. 31.) Therein,
11 Plaintiff appeared to state claims of intentional infliction of emotional distress as a result of
12 Fresno County Jail’s systemic failure to provide minimally adequate medical care to prisoners
13 with disabilities. (Doc. 30.) He attached an email with an employee of the Fresno County
14 Sheriff’s Office discussing the jail’s inhaler policy at the time Plaintiff was in custody, which was
15 to provide an inhaler within 24 hours of a request. Plaintiff also averred to a previous class action
16 against the same Defendants regarding the Jail’s provision of reasonable accommodations for
17 disabilities. (Doc. 30.)

18 The Magistrate Judge issued findings and recommendations recommending Plaintiff’s
19 second amended complaint be dismissed with prejudice and stating that the second amended
20 complaint did not cure the previously identified pleading defects. (Doc. 32 at 11:5-9.)
21 Specifically, though Plaintiff mentioned of a policy against providing inmates inhalers at
22 booking, Plaintiff’s second amended complaint made clear that asthma treatment is available
23 upon request and was provided to Plaintiff regularly. The Magistrate Judge further found that any
24 delay between Plaintiff’s request for an inhaler and his receiving it was “short and at most
25 negligent”—falling short of the standard for an inadequate medical care claim. (Doc. 32 at 8–9.)
26 Plaintiff’s allegations were similarly inadequate as to his claims under the Americans with
27 Disabilities Act and as to his intentional infliction of emotional distress claim. The Court served
28 the findings and recommendations on Plaintiff. It advised him that any objections thereto were to

1 be filed within 14 days after service. (*Id.* at 12.) Plaintiff then filed a third amended complaint, a
 2 motion to amend, and objections to the findings and recommendations. (Docs. 33, 34, 35.)

3 II. DISCUSSION

4 A. Motion to Amend

5 A party may amend its pleading once as a matter of course within 21 days after serving it,
 6 or “if the pleading is one to which a responsive pleading is required, 21 days after service of a
 7 responsive pleading.” Fed. R. Civ. P. 15(a)(1). But “[i]n all other cases, a party may amend its
 8 pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P.
 9 15(a)(2).

10 Leave to amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a)(2).
 11 However, the Court may decline to grant leave to amend “if there is strong evidence of ‘undue
 12 delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies
 13 by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance
 14 of the amendment, [or] futility of amendment, etc.’” *Sonoma Cty. Ass’n of Retired Employees v.*
 15 *Sonoma Cty.*, 708 F.3d 1109, 1117 (9th Cir. 2013) (quoting *Foman v. Davis*, 371 U.S. 178, 182
 16 (1962)). “Futility alone can justify a court’s refusal to grant leave to amend.” *Novak v. United*
 17 *States*, 795 F.3d 1012, 1020 (9th Cir. 2015) (citing *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir.
 18 1995)).

19 The Court has reviewed Plaintiff’s proposed third amended complaint (“TAC”). (Doc.
 20 33.) As with Plaintiff’s prior submissions, the proposed TAC does not allege facts amounting to
 21 a constitutional violation. (Doc. 33.) The proposed TAC states that the Defendant(s) “did not
 22 take any reasonable measures at all” to provide Plaintiff with asthma treatment—an allegation
 23 that is clearly contradicted by Plaintiff’s own account that he regularly received treatments, albeit
 24 slower than he sometimes preferred. Plaintiff further appears to abandon his ADA and intentional
 25 infliction of emotional distress claims in place of a state claim for reckless endangerment under
 26 California Penal Code § 368, a criminal statute under which there is no private right of action.
 27 *Soriano v. Countrywide Homes Loans, Inc.*, No. C 09-02415 JW, 2010 WL 11590680, *10 (N.D.
 28 Cal. Feb. 5, 2010). The Court finds that the proposed TAC does not contain substantive additions

1 that would impact the supportability of the recommendations, and it finds that amendment would
2 be futile based on the filed complaint and motion to amend. *See Novak*, 795 F.3d at 1020. The
3 Court also finds the repeated failure to cure deficiencies through amendments previously allowed
4 weighs against granting leave to amend. *See Sonoma Cty. Ass'n of Retired Employees*, 708 F.3d
5 at 1117. Accordingly, the Court **DENIES** Plaintiff's motion to amend.

6 **B. Adoption of Findings and Recommendations**

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
8 *de novo* review of the case. Having carefully reviewed the entire file, including Plaintiff's
9 objections, the Court holds that the findings and recommendation are supported by the record and
10 proper analysis. Plaintiff's objections merely reiterate the facts alleged in his amended complaints
11 and argue that the Magistrate Judge drew incorrect legal conclusions from those facts; the
12 objections therefore do not call the Court's conclusions into question. The findings and
13 recommendations are hereby adopted in full.

14 **III. ORDER**

15 Accordingly, the Court **ORDERS**:

- 16 1. Plaintiff's motion to amend (Doc. 34) is **DENIED**.
17 2. The findings and recommendations issued on January 20, 2023 (Doc. 32) are
18 **ADOPTED IN FULL**.
19 3. This action is **DISMISSED WITH PREJUDICE**.
20 4. The Clerk of Court is directed to close this case.

21
22 IT IS SO ORDERED.

23 Dated: **July 12, 2023**

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UNITED STATES DISTRICT JUDGE